

Twombly, 550 U.S. at 570; B & B Hardware, Inc. v. Hargis Indus., Inc., 569 F.3d 383, 387 (8th Cir. 2009).

III. DEFENDANT THOMPSON’S MOTION IS NOT A MOTION TO DISMISS UNDER RULE 12(b)(6), BUT IS INSTEAD AN ATTEMPT TO TRY THE MERITS AT THE VERY OUTSET OF THE CASE

Apparently recognizing that Plaintiff has thoroughly pled each and every element of her federal and state law claims, Defendant Thompson turns to premature arguments about the merits of the state law claims (while ignoring the federal claims altogether). Defendant Thompson does not claim that Plaintiff’s Petition fails to allege facts (which must be assumed to be true) sufficient to state a facially plausible claim for relief, as he is required to do to sustain a Rule 12(b)(6) motion. Instead, Defendant Thompson merely asserts that he has an affirmative defense to Plaintiff’s state law claims and asks the Court to hold a special hearing unknown to Missouri jurisprudence in order to decide the same prior to the commencement of discovery.

Defendant Thompson’s motion appears to be a kind of premature motion for summary judgment, albeit one that is not supported by any evidence whatsoever. The gist of the motion is that Plaintiff’s state law claims are barred because Defendant Thompson was justified in using force against Plaintiff, a 67-year old woman. Defendant Thompson is entitled under Missouri law to raise justification as an affirmative defense to Plaintiff’s tort claims, although the same must be properly pled and proved. Zink v. Hile, 594 S.W.2d 344, 346 (Mo. Ct. App. W.D. 1980). Missouri law does not, however, contemplate that MO. REV. STAT. §563.074 (2012) creates a special expedited process to address justification defenses, and there is no such thing under Missouri law as a “563.074 justification hearing,” as requested in Defendant Thompson’s motion. Defendant Thompson seems to be requesting that this Court hold an evidentiary hearing prior to the completion (or even the commencement) of discovery, and on the basis of such

CERTIFICATE OF SERVICE

The undersigned certifies that on June 27, 2013, a copy of the foregoing document was electronically filed with the Clerk of the District Court by using the CM/ECF system, which will send a notice of electronic filing to the e-mail addresses below. The same was sent via U.S. Mail to the address set forth below:

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